



## THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

29/09/2025

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

*Richards v Attorney-General* CIV-2025-485-240 [2025] NZHC 2833

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

### **What this judgment is about**

This judgment is about whether there is a binding legal framework that should be applied by the Court to assess the lawfulness of decisions made by Cabinet establishing a redress scheme for survivors of torture at the Child and Adolescent Unit of Lake Alice Psychiatric Hospital (Lake Alice) in the context of international human rights instruments and s 9 of the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).

### **Background**

Between 1970 and 1980, approximately 400 to 500 children and young people went through Lake Alice. Some of the children who were in the Child and Adolescent Unit, which operated between 1972 and 1980, were subjected to unacceptable treatment. This included electric shocks without anaesthetic and paraldehyde injections, which were administered for the purpose of punishment and control, and amounted to torture. Some children were also subjected to physical and sexual abuse by staff and other patients, the misuse of solitary confinement and emotional and psychological abuse.

Mr Richards was a former patient at Lake Alice in 1975. He, alongside another former patient Mr Zentveld, successfully took cases to the United Nations Committee Against Torture (UNCAT). In separate decisions in 2019 and 2022 the UNCAT found that New Zealand failed to properly investigate their complaints and denied them an appropriate remedy.

In July 2024, following the release of the reports from the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions (including the Royal Commission's Inquiry into the Lake Alice Child and Adolescent Unit), the Prime Minister acknowledged that some of the children and young people at Lake Alice were subjected to torture and apologised to the survivors of Lake Alice.

In December 2024, Cabinet considered a paper proposing a redress scheme for survivors of torture at Lake Alice. A Cabinet minute records that on 16 December 2024, Cabinet agreed to provide redress to survivors in addition to what had already been received through earlier settlement processes which had commenced from 2000 (the Cabinet Decisions). The redress scheme adopted under the Cabinet Decisions included two pathways for payment (either an expedited pathway under which a payment of \$150,000 would be made or an individualised pathway under which payment of a sum to be assessed independently would be made), a written apology acknowledging torture from the Prime Minister and the Minister for Mental Health and help to access support and rehabilitative services. Up to \$19.56 million was initially authorised for the redress scheme but this has since increased to \$26.56 million.

As of 10 July 2025, 237 people have registered for the redress scheme. Of these, 137 have been found to be eligible, 92 not eligible and 8 have eligibility decisions still pending. 98 of those survivors had chosen the expedited pathway, and 38 chose the individual assessment option (although one has withdrawn). All eligible survivors have until 30 September 2025 to register for a fixed payment or, for survivors who selected the individualised payment (for which applications closed on 30 April 2025), the arbiter is to complete assessments by that same date. All payments are to be completed by 31 December 2025.

### **Mr Richards' claim**

Mr Richards applies for judicial review and a declaratory judgment in respect of the Cabinet Decisions establishing the redress scheme for Lake Alice survivors. The application is brought on the grounds that the Cabinet Decisions do not comply with s 9 of the Bill of Rights Act, nor New Zealand's obligations under international law including the International Convention on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Torture Convention). Mr Richards says the Cabinet Decisions should be set aside, and declarations made as to their non-compliance with these legal obligations.

### **Decision**

The parties agree that Cabinet was exercising a prerogative power in making the Cabinet Decisions and that the exercise of such a power may be reviewed by the Court but only when a legal framework exists against which it may be appropriately measured.

*Does the Torture Convention provide a binding legal framework against which the Cabinet Decisions may be assessed?*

Mr Richards says that for two reasons the Torture Convention is a legal framework against which the lawfulness of the Cabinet Decisions should be assessed. The first is that New Zealand's reservation to art 14 of the Torture Convention (which reserves the right to

award compensation to torture victims only at the discretion of the Attorney-General) is invalid. The second is that the Torture Convention is part of domestic law because it is incorporated by the Crimes of Torture Act 1989.

The High Court found that it is not for the Court to reach any conclusion about the validity of New Zealand's reservation to art 14 of the Torture Convention. The validity of the reservation is an international law matter relating to an agreement between states. Accountability of state parties is in the international forum. Other state parties may raise any concerns they have with the reservation, although there has been no such objection. The UNCAT may make findings when a New Zealand citizen makes a claim of violation of the Torture Convention. Relevant international bodies may also comment on and make recommendations about New Zealand's reservation. However, such findings, comments and recommendations are persuasive rather than binding under domestic law.

The High Court found that the Crimes of Torture Act does not have the effect of fully incorporating the Torture Convention into domestic law. The reservation to art 14 is a matter of international law and is not removed by the Crimes of Torture Act. Upon canvassing the legislative history of the Crimes of Torture Act, the Torture Convention's inclusion in the schedule to the Act appears to be for a convenient reference point for the matters being dealt with at the time. In addition, the UNCAT itself does not consider that the Torture Convention is fully incorporated into New Zealand's domestic law.

The High Court concluded that the Torture Convention does not provide a binding legal framework against which the Cabinet Decisions may be reviewed by the Court.

*Does art 2(3) of the ICCPR (through s 9 of the Bill of Rights Act) provide a binding legal framework against which the Cabinet Decisions may be assessed?*

Mr Richards says the ICCPR is a legal framework against which the lawfulness of the Cabinet Decisions should be assessed. He says s 9 incorporates the right to an effective remedy under art 2(3) of the ICCPR. He says the right not to be subjected to torture has always existed and so has the principle that where there is a right there is a remedy. Therefore, as the Bill of Rights Act merely codifies the right not to be subjected to torture, the effect of enacting the Act to affirm New Zealand's commitment to the ICCPR is that art 2(3) prescribes the remedy that is available for a breach of right under the Act, irrespective of when an act of torture occurred.

The High Court concluded that New Zealand's obligations under the ICCPR do not (either through s 9 of the Bill of Rights Act or directly) provide a binding legal framework against which the Cabinet Decisions may be assessed.

A remedy may be available to Lake Alice torture survivors under the Bill of Rights Act or at common law through a claim brought in the courts. Importantly, it is the courts who provide remedies for such breaches of rights. Such a claim may face difficulties because of when the acts of torture occurred, whether the Bill of Rights Act may apply retrospectively and how the law of limitation applies. Here, Cabinet has made a policy decision to create a redress scheme. That decision does not derogate from other rights survivors have under the Bill of Rights Act or at common law. Entry into the redress scheme is voluntary.

In this novel set of circumstances, the executive would appropriately make policy decisions in relation to redress. In the absence of a legal framework against which to assess the Cabinet Decisions it is not for the Court to suggest to Cabinet how it should make decisions about the issues posed by the events at Lake Alice.

*Did Cabinet fail to consider New Zealand's international law obligations as a mandatory relevant consideration?*

For completeness, the High Court canvassed Mr Richards' argument that Cabinet failed to consider a mandatory relevant consideration in making the Cabinet Decisions, being New Zealand's international law obligations. Legal advice was obtained in the preparation of the Cabinet paper. The Cabinet paper shows an awareness of the international law context and New Zealand's relevant international commitments. The Cabinet Decisions recognise that it is not possible for the torture of children to ever be rectified by a monetary payment, but that the response is to provide meaningful compensation, important recognition and an expression of regret by the Crown. It is not for the Court to critique in detail the discussion of international law obligations, particularly given its earlier conclusions that the Torture Convention and the ICCPR do not provide a binding legal framework against which to measure the Cabinet Decisions. Cabinet did not fail to consider New Zealand's international law obligations.

*Conclusion on Mr Richard's claim*

The High Court found that the international instruments advanced by Mr Richards are not binding legal frameworks against which the Cabinet Decisions may be measured. The Cabinet Decisions are prerogative decisions by the executive as a policy response to the accepted torture of Lake Alice survivors. In the absence of a binding legal framework against which the Cabinet Decisions can be measured, it cannot be said the implementation of the redress scheme breaches Mr Richards' rights as claimed.

## **Result**

The application is dismissed.